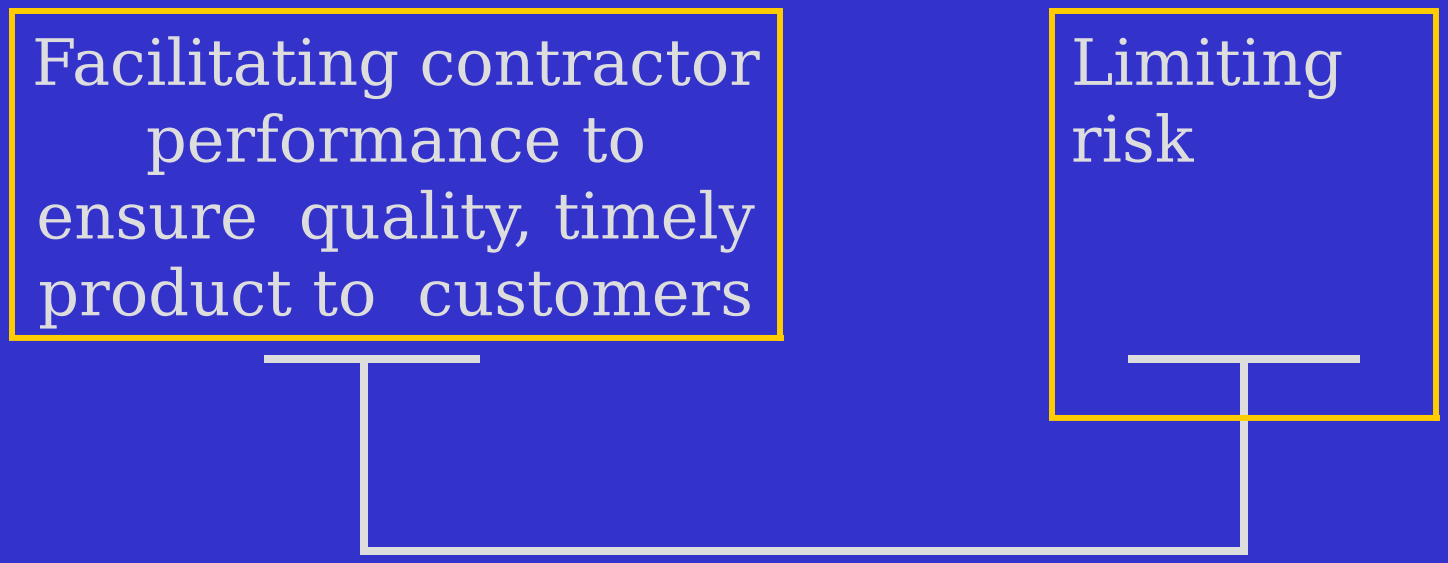
Lesson 6: Risk Management of Performance-Based Payments

What We Will Learn

- Quick review of risk management and how it applies to PBPs
- Potential increased risk situations

Risk Management

- The art of maintaining a balance



Risk Management

- Review of contractor key processes, such as:
  - Management of PBP request preparation and submittal
  - Management of supplier financial condition
  - Successful completion of performance events

Risk Management: Considerations

- Pre-Award Survey
- Development of PBP terms
- Postaward Orientation Conference
- Type of technical evaluations/ validations that must occur

Risk Management (cont'd)

- Identify and analyze key areas within the contractor's PBP process
  - Are they adequate to calculate, prepare, and substantiate PBPs?

Risk Management (cont'd)

- ACO must consider:
  - Past and current performance and reliability
  - Experience
  - Quality of management
  - Other attributes identified by the CMO PBP Team
  - Any special circumstances (i.e., Conversion from Progress Payment to PBPs, contract with reduced or suspended PBPs)

Risk Management (cont'd)

- See FAR 32.1007(c) for review criteria
- Periodic Reviews
  - Financial condition review is performed in manner similar to Progress Payments
  - Ensure no encumbrances to property described in paragraph (f) of FAR 52.232-32

Risk Management Tools

- Process proofing
- Systems evaluations
- Data analysis
- Audits

Risk Management Resources

- MOCAS
- Technical reviews and event completion validations
- Review and approval of PBP Request
- Liquidation application and adjustment, if appropriate
- Payment Verification/Validation

Risk Management (cont'd)

- Monitoring of risk includes
  - Financial Capability Reviews
  - Subcontractor Payment Consistency
  - Production Reviews
  - CMO ongoing analysis and recommendations

Risk Management (cont'd)

- ACO should retain the following documentation:
  - PBP transactions and correspondence
  - Reports and information (i.e., from DCAA, DACO, other ACOs, and officials, etc.)
  - Risk analysis
  - Risk monitoring results
  - Updates as applicable

Potential Increased Risk Situations

- Liquidation errors
- Delegation of PBP negotiations
- Reduction or suspension of PBPs
- Conversions from Progress Payments to PBPs

Conversion: PP to PBP

- Contracts cannot contain both Progress Payment (PP) and PBP provisions; however, contracts can be modified to convert from PPs to PBPs
- Liquidation schedules and related matters are of primary concern when converting from PP to PBPs

Conversion: PP to PBP (cont'd)

- Conversion modification must provide instructions on how to liquidate all unliquidated PPs
- Liquidation Options:
  1. Instruct contractor to repay unliquidated PPs
  2. Re-allocate previous PPs via adjustments
  3. Instruct paying office to take offset against first PBP invoice

Conversion: PP to PBP (cont'd)

- Liquidation options (continued)
  4. Incorporate previous PPs into the first PBP event

ACO Negotiation of PBPs

- PCO may delegate negotiation of:
  - Performance criteria
  - Successful event completion
  - Event value

PBP Reduction-Suspension

- ACO may reduce or suspend PBPs when contractor:
  - Fails to comply with material requirement of the contract
  - Fails to progress
  - Becomes financially unsound
  - Is delinquent in paying subcontractors
- Reduction/suspension taken on PBP request

Communicate

- ACO should notify the customer if contractors:
  - Fail to meet scheduled performance event
  - Jeopardize contract completion due to financial deterioration
  - Enter into a financial agreement encumbering property title

What We Learned

- Risk management techniques
- Some situations have increased risk potential
  - Liquidation errors
  - Delegation of PBP negotiations
  - Reduction or suspension of PBPs
  - Conversions from Progress Payments to PBPs